

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5

In the Matter of

AMERICOLD LOGISTICS, L.L.C.

Employer

And

Case 5-RC-15186

TEAMSTERS LOCAL UNION NO. 639

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein call the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. AmeriCold Logistics, L.L.C. (herein "the Employer" or "the Company"), a Delaware limited liability company with a facility located in Strasburg, Virginia, is engaged in the business of providing warehousing services. During the last calendar year, a representative period, the Employer has received gross revenues in excess of \$1,000,000. During the same period, the Employer has purchased and received at its Strasburg facility, materials valued in excess of \$50,000 directly from points located outside the State of Virginia. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act.

Teamsters Local Union No. 639 (herein "the Petitioner" or "the Union") filed a petition seeking to represent a unit of all selectors/pickers, outboard loaders/checkers, inbound off loaders/checkers, stockers, BLAST Odenberg infeed and outfeed, inventory control, sanitation and maintenance employees, warehousemen and drivers/yard jockeys, but excluding all other employees (office clerks, professional employees, managers, guards and supervisors) as defined in the Act. There are 83 individuals in the

petitioned-for unit. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

The Employer contends the unit should consist of a “wall-to-wall” unit, excluding the following “Odenberg Blast” leadpersons as supervisors: Eric McKeever, Joe Lewis, Stacy Rinker, Simpson Stevens, and Timothy Henry. The Employer contends that six other leadpersons (Sheldon Gilbert, Charles Orndorff, James Phelps, G. Holsinger, P. Wilson, and B. Lipscomb) are not statutory supervisors. The Petitioner contends that either all 11 leadpersons are statutory supervisors and should be excluded from the unit, or alternatively, that no leadperson is a supervisor within the meaning of the Act.

The Employer further contends that the appropriate unit must include six customer service representatives (herein “CSRs”) because they share a community of interest with the production and maintenance and distribution employees, and six shipping and receiving clerks (herein “clerks”) because they are plant clericals who share a community of interest with the petitioned-for employees. There is no history of collective bargaining for any of these employees.

### **Employer’s Operations**

The Employer serves as a third-party warehousing, storage, freezer, cooler and distribution facility. In this regard, it stores its customers’ products and distributes these products to their respective customers. The Employer employs about eighty warehouse employees in addition to: an operations manager; a general manager; a human resources manager; an office manager,<sup>1</sup> who supervises the CSRs and clerks; a chief engineer; an inventory control supervisor; two sanitation employees; one inventory control clerk; five supervisors; eleven leadpersons; six CSRs; six clerks; and four mechanics. As noted above, the only employees at issue here are the leadpersons, the CSRs and the clerks.

The Employer’s facility is comprised of four major areas: an inbound area; an outbound area; a storage area; and an area where the Odenberg blast machine is located. General Manager Brian Beazer testified that there is a lead person assigned to each of the four areas, but that these assignments are not fixed. Rather, the leadpersons rotate among these four areas.

With respect to the physical layout of the facility, Beazer explained that it has an office area that is separated by glass from the inbound and outbound dock areas, which stretch the whole length of the building. The Odenberg blast machine, which is a case blast system used to quick-freeze product that comes in from the Employer’s main customer, occupies a large space in the dock area and is separated only by bumper guards or very large, concrete poles. Behind the dock area is the freezer area, which houses six freezer cooler units. Behind the freezer area is a rail dock that goes out to the railroad. Approximately thirty feet across the dock floor from the dock office is the inventory control office.

On cross-examination, Beazer testified that there are four day teams consisting of seven to ten employees. In addition, there are three night teams, consisting of eight to fourteen employees. Each team is led by a leadperson.<sup>2</sup> Employees in the warehouse work four 10-hour shifts per week. The employees who work on the day teams work from 7 a.m. to 5:30 p.m., while those who work on the night teams work from 7 p.m. to 5:30 a.m.

### **Leadpersons**

#### **Odenberg Leads**

There are four individuals that regularly work as leadpersons on the Odenberg blast machine: Eric McKeever; Joe Lewis; Stacy Rinker; and Simpson Stevens. In addition, Timothy Henry works as leadperson on the Odenberg about 30 percent of his time. The remaining 70 percent of Henry’s time is

---

<sup>1</sup> This position was vacant at the time of the hearing in the instant matter.

<sup>2</sup> One of the night teams has two leadpersons assigned to it.

spent in other areas of the warehouse. The leadpersons who work on the Odenberg have more seniority with the company and have had special training on, and experience with, operating the Odenberg.

Beazer's testimony established that the Odenberg is a highly complicated piece of computerized equipment that contains a conveyor system with both an infeed and outfeed section. Leadpersons are charged with the responsibility of overseeing every aspect of its operation. While Beazer testified generally that leadpersons are held responsible if there is a problem with the product while it is going through the Odenberg, no examples of such instances were provided at the hearing.

The Odenberg only runs when there is product to be put through it. When there is product, the leadperson assigned to be in charge of the Odenberg assembles the group to work on it. Product is placed on the conveyor system, and it goes through the conveyor system once certain information is entered into the computer. While there is no set number controlling how much product should or should not be put through the Odenberg, if there is product to infeed, the leadperson directs that it be introduced into the infeed. Similarly, if there is product in the machine that the computer system has indicated is ready to be taken out, the leadperson directs that it be removed. As Beazer testified, "He is generally following what is going on on that machine." Moreover, the leadperson has a list of product and knows what product must be put through the Odenberg based on the number of trucks that have arrived at the facility.

Once the product has emerged from the conveyor system in a deep-frozen state, the leadperson directs employees working on the machine to re-stack the product on pallets to be put away in the warehouse. About five to 10 employees work on the Odenberg at any one time, depending on the size of the load.<sup>3</sup>

Leadpersons are responsible for ensuring that the employees working on the Odenberg are productive. Consequently, a leadperson is authorized to reassign employees to different warehouse functions such as picking, loading or unloading if there is no product to load on the Odenberg. The leadperson is not required to obtain the authorization of a supervisor before he makes the reassignment but might consult with another leadperson or a clerk to determine where employees are needed in other parts of the warehouse.

The number of warehouse employees assigned to the Odenberg at a particular time depends on the amount of product. The leadperson also takes into account the other ongoing operations in the warehouse, of which he is apprised at the pre-shift meeting. Leadpersons must obtain a supervisor's permission before releasing employees before 5:30 p.m. in order to see if the warehouse employee is needed in another part of the facility.

Leadpersons assigned to the Odenberg may assign overtime without prior approval if such is required to complete the processing of product waiting to be fed through the machine. In all other circumstances, Odenberg leadpersons do not possess authority to assign overtime. In addition, the leadperson is authorized to determine whether or not the crew should work overtime to finish all of the work if just a small amount remains that can be completed the following day. Conversely, if a large amount of work is unfinished, the crew must stay to get the job done.

With regard to discipline, leadpersons assigned to the Odenberg have no authority to issue written warnings to employees but can try to correct an employee who is not performing his or her duties on the Odenberg correctly. If these efforts are ultimately unsuccessful, the leadperson can reassign the employee to a different area of the warehouse. If an employee is found by the leadperson to be not competent on the Odenberg, Beazer testified that it is the leadperson's responsibility to move the employee to a position that would be better suitable for his abilities. This is done, according to Beazer, by communicating this to the

---

<sup>3</sup> There are daily pre-shift meetings attended by all of the employees and supervisors in which the days' scheduled events are discussed, as well as daily staffing needs. At this meeting, the Odenberg leadpersons specify how many employees they need on the Odenberg for a particular day based on the scheduled workload. The workforce is then divided accordingly.

supervisor or the operations manager. However, the evidence contains no examples of specific instances in which this has occurred.

In addition, Beazer testified on direct examination that the leadperson can report an error committed by an employee to the supervisor and “between the two of them, they would implement” appropriate disciplinary action, depending on the employee’s prior disciplinary record. However, no examples of specific instances in which this has occurred were adduced at hearing. It is uncontroverted that leadpersons attend disciplinary discussions with warehouse personnel and management.

Leadpersons train warehouse employees to operate the Odenberg. It can take anywhere from two weeks to a month to fully train an employee on how to operate the Odenberg. To that end, leadpersons teach employees being trained on the Odenberg how to run the conveyor system and the proper use of the controls.

Only 10 percent of the Odenberg leadpersons’ time is spent performing manual labor in connection with the Odenberg. The balance of the time is spent directing the inflow and outflow of the product and making sure that employees are correctly performing the Odenberg tasks to which they are assigned.

Beazer provided general testimony regarding the fact that the Employer utilizes an “open door policy” which allows employees to go to their respective leadperson or supervisor if they have a particular problem. If the problem is not resolved at that particular level to the employee’s satisfaction, he or she may proceed to the next level in the chain of command. Beazer testified that leadpersons do not have the authority to resolve employee grievances concerning dischargeable offenses committed by non-grieving employees. Rather, such grievances are resolved by the operations manager, the supervisor, and the general manager. Beazer further testified that leadpersons on the Odenberg can resolve certain types of grievances relating to an employee’s competence to perform the job or some technical aspect of the job; however, Beazer did not illustrate this testimony with any specific examples of such grievances.

Leadpersons assigned to the Odenberg do not evaluate employees. Nor do they hire or interview prospective employees. The employees’ schedule is completed by the operations manager, not the leadpersons. Leadpersons do not attend supervisory meetings.

Odenberg leadpersons are paid an hourly rate that can range anywhere from \$9.55 to \$12.55. In addition, they are compensated for overtime in the same manner as the warehouse employees. Regarding benefits, they receive the same vacation and other benefits as the warehouse employees.

### **Non-Odenberg Leads**

Six individuals head up crews of employees that perform warehouse functions. These individuals are not assigned to lead a crew or team on the Odenberg as part of their leadperson functions. The non-Odenberg leadpersons work on the dock or in the freezer where they generally ensure that the movement and flow of product is continuous with respect to the inbound and outbound activities on the dock. In addition, their duties include making sure that the product is properly stocked and put away in the freezer. Like the other warehouse employees on their team, the non-Odenberg leadpersons operate equipment such as pallet jacks, loaders, and high-lifts.

Non-Odenberg leadpersons have a desk and computer in the office area. In addition, they interact with the clerks concerning the assignment of warehouse duties such as the loading of trucks based on the inbound and out bound operations for a particular day.

The hours of the non-Odenberg leadpersons are the same as the warehouse employees: four 10-hour shifts per week. As noted above, there are four day teams that work the day shift and three night teams that work on night shift. There are five to six leadpersons on duty on a particular shift, including

three to four non-Odenberg leadpersons working in the warehouse. About seven warehouse employees are assigned to work with a particular non-Odenberg leadperson.

The uncontroverted record evidence established that non-Odenberg leadpersons do not have the authority to: hire or interview prospective employees; discharge employees; issue written warnings; grant overtime without obtaining a supervisor's prior approval; transfer or reassign employees; layoff or recall employees; evaluate employees or provide input for such evaluations; grant time off; or schedule overtime. Nor do they monitor employees' productivity, which is monitored by the Inventory Control department. Non-Odenberg leadpersons may sign off on the time card for another warehouse employee if the supervisor is not present, which is a rare occurrence.

While non-Odenberg leadpersons cannot issue written warnings, Beazer testified that they can recommend discipline to their supervisor, who conducts his or her own investigation upon the leadperson's recommendation. The record contains no specific examples of instances in which this has occurred. While a non-Odenberg leadperson can correct a warehouse employee if he or she is doing something incorrectly, any warehouse employee can exercise such authority.

Non-Odenberg leadpersons cannot recommend that employees receive letters commending their performance. Rather, such recommendations are put through the operations manager by the supervisors. While Beazer testified that the non-Odenberg leadpersons can recommend an employee for promotion, he explained that anyone employed by the Employer can make such a recommendation. The record is devoid of any examples where this has occurred or any evidence demonstrating that such recommendations are effective.

Regarding the benefits of the non-Odenberg leadpersons, they receive the same benefits as the other warehouse employees. Their hourly rates fall within the same range as the Odenberg leadpersons: \$9.55 - \$12.55. Warehouse employees' hourly rates range from \$9.55 to \$11.55. The record establishes that the leadpersons may earn one dollar per hour more than the warehouse employees because they are responsible for certain paperwork as well as overseeing the warehouse area to which they are assigned. Like the Odenberg leadpersons, the non-Odenberg leadpersons receive overtime but generally not as much overtime as the Odenberg leadpersons. Warehouse employees and leadpersons receive the same pension benefits, receive a one-half hour unpaid lunch break, two daily breaks, and are on the same vacation schedule.

As noted above, there was some general testimony that employees may go to their respective leadperson to try to resolve grievances. However, the record does not establish any examples of grievances that have been resolved by the non-Odenberg leadpersons. As in the case of the Odenberg leadpersons, the non-Odenberg leadpersons do not attend supervisory meetings.

#### CSRs

There are six CSRs who are primarily responsible for taking orders from customers. These orders, which start to come in at 7 a.m., are made telephonically, electronically or via facsimile and contain information such as product codes, the name of the product, as well as the weight and the quantity of the product. The CSR inputs these orders into the inventory management system, which controls all movement throughout the warehouse. At 2 p.m., the orders are "locked-down," which means that nothing can be added to a particular existing order after such time. CSRs print hard copies of the orders as well as the pallet bill, which sets forth the specific information as to what is on a particular pallet.

After 2 p.m., the CSR prints out the inbound receiving documents and places these documents in folders, which they take to the clerks. The clerks separate the documents based on whether the driver who is delivering the product is a live driver (one who will stay with the trailer until the product is completely unloaded) or a drop trailer driver (one who leaves the trailer in the yard to be moved at a later time by a yard jockey).

As for the outbound process, the CSRs are responsible for taking orders, which they data entry into the computer system. Then, CSRs prepare a hard copy of the order and pallet bill, which identifies the product to be picked by the warehouse employee, and places this information in an envelope, which goes to the clerk. The clerk advises the leadperson or supervisor that an order has come down. In addition to the above, the CSRs are responsible for closing out orders that have been fulfilled. This is done by printing out a final, hard copy of the order, which is attached to the inbound documents and then filed by the CSRs.

While the CSRs are all cross-trained to perform various functions, each possesses a particular area of specialty such as: export paperwork and stamping; accounts payable; accounts receivable; billing; filing and inputting of maintenance bills into the bill-tracking system; work orders for the maintenance department; customer claims of overages, shortages, missing or damaged product; tracking warehouse employees' attendance; and processing add-ons (orders placed after the 2 p.m. lock-down time). All CSRs, except one, work as clerks at least one Sunday per month on a rotating basis. The one exception, identified as Lance, who works on the second shift, spends approximately 50 percent of his time working as a clerk. The balance of his time is spent mainly dealing with "add-on" orders that another CSR is unable to complete before the conclusion of her shift.

CSRs spend about 90 percent of their time working in the office and, unlike the warehouse employees, traditionally report to the office manager. Nor do CSRs work four 10-hour shifts. Rather, the CSRs work from 7 a.m. to 2:30 p.m. or 8 a.m. to 3:30 p.m. In addition, one CSR works from 3:30 p.m. until 11:30 p.m. or midnight.

The range of hourly rates for the CSRs is identical to those for the warehouse employees: \$9.55 to \$11.55. In addition, CSRs receive the same benefits as the warehouse employees except for the vacation benefits they receive within the first or second years of employment.<sup>4</sup> As in the case of the warehouse employees, CSRs receive two breaks as well as a one-half hour, unpaid lunch break.

Regarding the CSRs' interaction with warehouse employees, Beazer testified that the CSRs spend about 30-50 percent of their time in contact with the warehouse employees, including leadpersons, warehouse employees and inventory control persons. On the other hand, warehouse employee Keith Alan Booth, who testified on behalf of the Petitioner pursuant to a subpoena, testified that he never deals with the CSRs in the course of his work, and or has he ever talked to them regarding any of his job functions.

#### Clerks

Clerks traditionally report to the office manager, as do the CSRs, and work in an area referred to by Beazer as the "dock clerk office," the area between the office and the dock which is enclosed in glass. Ninety-five percent of the clerks' time is spent in this area. While the clerks' duties take them to the dock area in the warehouse, they generally do not go into the freezer.

All six clerks employed by the Employer perform the same job function: processing inbound and outbound orders. While the clerks do enter the warehouse, they do not physically pick product, or load or unload trucks. Nor do they operate the Odenberg machine. Rather, they are primarily responsible for controlling the flow of the paperwork and notifying the inbound leadpersons that a load has arrived. The leadperson reviews the inbound document and the board to see if the product has to be put through the Odenberg or if it is stockable, and assigns a door and a warehouseperson who will be unloading the product.

There are three shifts for the clerks: 7 a.m. to 2:30 p.m.; 2 p.m. to 10:30 a.m.; and 10 p.m. to 7:30 a.m. As in the case of the warehouse employees and CSRs, clerks receive an unpaid one-half hour lunch and two breaks.

---

<sup>4</sup> The record established that after the first year of employment, the CSRs receive two weeks of vacation, as do supervisors and other members of management, whereas warehouse employees only receive one week of vacation. Eventually, warehouse employees receive the same amount of vacation time as the CSRs and members of management.

With respect to pay, the range for the clerks' hourly rates is the same as the CSRs and the warehouse employees. The vacation benefits for clerks, however, are the same as those of the CSRs.

According to Beazer's testimony, warehouse employees often come to the clerks throughout the day to obtain loading and unloading information and to turn in pick up documents. When asked by Employer's counsel to describe the extent of contact that the clerks have with the warehouse employees, he responded that it is "all day." Keith Alan Booth testified that while he never interacts with the CSRs, he interacts with the clerk by checking in paperwork through the window so that the clerk can verify that his product counts are correct. However, he testified that he has hardly ever seen a clerk on the dock itself.

In addition to contact with warehouse employees, clerks have contact with the inventory control employees when large orders have come in and the clerks need assistance with recounting the product. In such instances, the inventory control employee would come out to the dock to recount the product and bring the final count to the clerk.

### **Analysis and Conclusions Regarding the Leadpersons**

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. Mississippi Power Co., 328 NLRB 965, 969 (1999), citing Ohio Power v. NLRB, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677 (1985). As pointed-out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in Hydro Conduit Corp.: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also Quadrex Environmental Co., 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, 280 NLRB 1222, 1224 (1986).

In enacting Section 2(11), Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, setup men and other minor supervisory employees." See **Senate Rep. No. 105, 80th Cong., 1st Sess. 4**, reprinted in **1 NLRB Legislative History of the Labor Management Relations Act, 1947**. The Board has long recognized "there are highly skilled employees whose primary function is physical participation in the production or operating processes of their employer's plants and who incidentally direct the movements and operations of less skilled subordinate employees," who nevertheless are not supervisors within the meaning of the Act, since their authority is based on their working skills and experience. Southern Bleachery & Print Works, 115 NLRB 787, 791 (1956), enfd. 257 F.2d 235 (4th Cir. 1958), cert. denied, 359 U.S. 911; Gulf Bottlers, Inc., 127 NLRB 850, n. 3, 858-861 (1960), enfd. sub nom, United Brewery Workers v. NLRB, 298 F.2d 297 (D.C. Cir. 1961); Koons Ford of Annapolis, 282 NLRB 506, 513-514 (1986), enfd. 833 F.2d 310 (4th Cir. 1987), cert. denied 485 U.S. 1021 (1988). See also KGW-TV, 329 NLRB No. 39 (1999) ("even the

exercise of substantial and significant judgment by employees instructing other employees based on their own training, experience and expertise does not translate into supervisory authority responsibly to direct other employees”).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. Golden Fan Inn, 281 NLRB 226, 229-230 fn. 12 (1986). As stated in Ohio Masonic Home, 295 NLRB 390, 393 (1989): "in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists. Tucson Gas & Electric Co., 241 NLRB 181 (1979)." Accord: Carlisle Engineered Products, 330 NLRB No. 189 (2000); Fleming Companies, 330 NLRB No. 32, n.1 (1999); Bennett Industries, 313 NLRB 1363 (1994). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. New Fern Restorium Co., 175 NLRB 871 (1969).

Applying these principles to the instant facts, I find that the evidence is insufficient to establish that any of the leadpersons, non-Odenberg or Odenberg, are supervisors as defined by Section 2(11) of the Act.

On brief, the Employer argues that the Odenberg leads are supervisors because they: train warehouse employees to operate the Odenberg; supervise and direct the warehouse employees assigned to operate the Odenberg; assign specific warehouse employees to the Odenberg during pre-shift meetings; take warehouse employees off of the Odenberg and transfer them to different tasks throughout the warehouse when there is no product for the Odenberg; counsel and correct warehouse employees not performing well on the Odenberg; transfer warehouse employees to different areas of the warehouse when there are problems with their performance on the Odenberg; initially address disciplinary issues with employees assigned to the Odenberg and report unacceptable conduct to the supervisor; participate in disciplinary discussions; and determine the need for overtime and assign overtime on the Odenberg machine.

Having carefully considered all of the record evidence and the parties' arguments at hearing and in their briefs, I find that the Odenberg leadpersons are not supervisors within the meaning of the Act. The record does not establish that the Odenberg leadpersons' assignment or direction of work is based on anything other than experience and knowledge of the skills necessary to perform the job. North Shore Weeklies, Inc., 317 NLRB 1128 (1995). Beazer's own testimony established that the Odenberg leadperson makes assignments based on what is going on relative to the highly computerized Odenberg machine. If there is product, it is put through the Odenberg. Conversely, if there is no product, nothing is put through the machine and the employees are released to work elsewhere. As for the Odenberg leadpersons' ability to assign overtime, the record reveals that if the work is substantially unfinished, the crew stays to finish it. If no work or a small amount of work remains to be finished, the work can be finished the following day. This is simply not the kind of genuine management prerogative necessary to conclude that a person is a statutory supervisor. Quadrex Environmental Company, Inc., 308 NLRB 101 (1992)(where the Board found leads not to be supervisors where they possessed some authority to assign overtime, provide input for evaluations and receive employee grievances).

As to the record testimony regarding the Odenberg leadpersons role in the disciplinary process, there is insufficient evidence that the leadpersons' role requires the use of independent judgment required to confer supervisory status. As noted above, the record contains no specific examples in which any of the leadpersons made effective recommendations regarding employee discipline. In the absence of detailed, specific evidence showing that the person in dispute exercises independent judgment, generalized statements and inference are not sufficient to establish supervisory status. Quadrex Environmental Company, Inc., Id. Thus, Beazer's conclusory testimony that the Odenberg leadpersons can report an error committed by an employee to the supervisor and "between the two of them they would implement" appropriate disciplinary action is insufficient to prove that they are 2(11) supervisors. Contrary to the Employer's arguments on brief, the fact that the Odenberg leadpersons can orally counsel employees does not demonstrate the exercise of supervisory authority. North Shore Weeklies, Inc., supra, at 1130.



Nor are the Odenberg leadpersons supervisors because they reassign idle employees to other areas of the warehouse or train employees on the Odenberg. These duties are more a function of the Odenberg leadpersons' greater experience or the exercise of work judgment and do not confer supervisory status. McCullough Environmental Services, Inc., 306 NLRB 565, 568 (1992), enf. denied 5 F.3d 923 (5<sup>th</sup> Cir. 1993).

Similarly, the record evidence is insufficient to establish that the non-Odenberg leadpersons possess the requisite independent judgement to be considered 2(11) supervisors. As noted above, they do not have the authority to: hire or interview prospective employees; discharge employees; issue written warnings; grant overtime without obtaining a supervisor's prior approval; transfer or reassign employees; layoff or recall employees; evaluate employees or provide input for such evaluations; grant time off; or schedule overtime. While there was rather general, conclusory testimony that the non-Odenberg leadpersons can recommend discipline to a supervisor, the record established that a supervisor would conduct his or her own investigation upon such a recommendation. The record failed to demonstrate that such recommendations are effective. As for the testimony that non-Odenberg leadpersons may "try to resolve grievances" brought to them by employees on their team, as noted above, the evidence fails to establish any specific examples of situations where non-Odenberg leadpersons have resolved such grievances and the circumstances surrounding such grievances.

In light of the foregoing, it appears that the leadpersons occupy the type of leadperson position that Congress intended to exclude from the definition of supervisor. I conclude that the evidence failed to establish that they are 2(11) supervisors. Accordingly, I find that the **Odenberg leadpersons** and **non-Odenberg leadpersons** are non-supervisory employees with a community of interest warranting their inclusion in the Unit, and are eligible to vote in the election.

#### **Analysis and Conclusions Regarding the CSRs and Dock Clerks**

In making my findings, I note that Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining, and there is nothing in the statute that requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. Morand Brothers Beverage Company, 91 NLRB 409, 418 (1950), enf'd. 190 F.2d 576 (7<sup>th</sup> Cir. 1951). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration, and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested unit does not exist. Overnite Transportation Co., 322 NLRB 723 (1996); Purity Food Stores, 160 NLRB 651 (1966). Although other combinations of the Employer's employees may also be appropriate for collective bargaining, I need only determine whether the employees sought by the Petitioner constitute an appropriate unit.

While the Act does not fix specific standards for making unit determinations, the Board has developed a number of criteria to use in representation cases. Foremost is the principle that mutuality in wages, hours, and working conditions is the prime determinant of whether a given group of employees constitutes an appropriate unit. Continental Baking Co., 99 NLRB 777, 782 (1952). Community of duties and interests of the employees involved is the determinant. Swift Co., 129 NLRB 1391 (1960). As stated by the Board in Continental Baking:

In deciding whether the requisite mutuality exists, the Board looks to such factors as the duties, skills, and working conditions of the employees involved, and especially to any existing bargaining history.

Id. at 782-783.

The community of interest test also considers factors such as the degree of functional integration, Atlanta Hilton & Towers, 273 NLRB 87 (1984); common supervision, Associated Milk Producers, 251 NLRB 1407 (1980); employee skills and functions, Phoenician, 308 NLRB 826 (1992); interchange and

contact among employees, Associated Milk Producers, supra; and general working conditions and fringe benefits, Allied Gear & Machine Co., 250 NLRB 679 (1980). While the Board has generally included plant clericals in a production and maintenance unit, the distinction drawn between office clericals and plant clericals is not always clear. Hamilton Halter Co., 270 NLRB 331 (1984).

Applying the above standards to the instant case to the classification of CSRs, contrary to the Employer's arguments on brief, I find that the CSRs do not share such a strong community of interest with the warehouse employees to require their inclusion in the same unit. I particularly find noteworthy the fact that the CSRs work in an office area where they perform separate and distinct functions from the functions performed by the clerks or warehouse employees. CSRs venture infrequently into the warehouse area. Contrary to Employer's counsel's arguments on brief that they frequently interact with the warehouse employees, the record failed to establish that the CSRs, unlike the clerks, frequently interact with the warehouse employees.

Having carefully considered all the record evidence, I find that the CSRs need not be included in the petitioned-for unit.<sup>5</sup>

On brief, the Employer relies on Scholastic Magazines, Inc., 192 NLRB 461 (1971) to support its argument for the inclusion of the CSRs.<sup>6</sup> In that case, the Board found, contrary to the Regional Directory, that the appropriate unit included, in addition to the warehouse and maintenance employees, employees of the cashiers department, the order processing department, and the customer service department because the employees of the three processing departments and warehouse employees participated equally and fully in a "single highly integrated process" and performed related functions and exercised skills similar to those of warehouse department employees. There the record established that there was some functional similarity and interchange among the warehouse and maintenance departments and the three processing departments.

The facts of the instant case regarding the CSRs are distinguishable from those in Scholastic Magazines.<sup>7</sup> As noted above, the record evidence not in dispute failed to establish that the functions of the CSRs are similar to those of the warehouse employees, and does not establish the interchange which might warrant their inclusion in the petitioned-for unit.

While the record demonstrated that the CSRs share similar benefits and wages to those of the warehouse employees, perform functions relating to the warehouse operations and work as clerks at least one Sunday per month, the record also established that they perform many typical office clerical functions that have no direct relation to the warehouse operations. Moreover, the work performed by the CSRs primarily involves the taking of orders from customers. The bulk of this work is performed in an office area.

I do agree, however, with the Employer that the clerks are plant clericals who must be included in the unit found appropriate. In short, the clerks are an integral part of the Employer's production process. Unlike the CSRs, the job functions of the clerks require that they often venture into the dock area in the

---

<sup>5</sup> The unit placement of the CSR identified as Lance is discussed infra.

<sup>6</sup> The Employer requests that the Region take note of a Stipulated Election Agreement in Case No. 31-RC-7923, involving a different petitioner and one of the Employer's facilities located in Ontario, California. However, the Board does not consider itself bound by a collective-bargaining history resulting from a consent election conducted pursuant to a unit stipulated by the parties rather than one determined by the Board. Mid-West Abrasive Co., 145 NLRB 1665 (1964).

<sup>7</sup> In arguing that the CSRs share a community-of-interest with the warehouse employees, the Employer also cites John N. Hansen Co., 293 NLRB 63 (1989). That case, however, involved the placement of a single employee who initiated the warehouse order-filling process by converting customer orders to "picking tickets" and had "frequent face-to-face contact with warehouse employees" when tracking them down to give them invoices and export forms, when providing routing instructions and when dealing with warehouse employees regarding returned and defective merchandise. *Id.* at 64. Unlike in Hansen, the record evidence not in dispute in the instant case is insufficient to establish that the CSRs had such frequent face-to-face contact with the warehouse employees.

warehouse where they interact with warehouse personnel in connection with inbound and outbound warehouse operations. While they do not physically load and unload trucks or operate the Odenberg machine as noted above, warehouse employees often come to the clerks to obtain loading and unloading information and to turn in pick-up documents.

In arguing that the clerks, together with the CSRs, should be excluded from the unit as office clericals, the Petitioner points to the fact that clerks do not physically load and unload trucks or operate the Odenberg machine. Such factors alone do not warrant their exclusion. United States Steel Corporation, 192 NLRB 58 (1971). Similarly unpersuasive is the argument that their hours and supervision are different from those of the warehouse employees in light of the frequent face-to-face contact between the clerks and the warehouse employees in connection with the warehouse operations.

Having carefully considered all of the record evidence and the arguments of the parties at hearing and in their briefs, I conclude that the CSRs do not share a strong community-of-interest with the petitioned-for unit as to require their inclusion in the unit. Vitro Corporation, 309 NLRB 390, 392 (1992); Esco Corp., 298 NLRB 837 (1990). On the other hand, I do find that the clerks should be included in the unit based on community-of-interest considerations and the record taken as a whole. Accordingly, because I find that the **CSRs** do not share a sufficient community-of-interest to warrant their inclusion in a unit consisting of warehouse employees and clerks, I shall, therefore, **exclude** the CSRs from the unit, and they are **ineligible** to vote. However, I find that the **clerks** shall be **included** in the unit, and they are **eligible** to vote in the election.<sup>8</sup>

The Petitioner has stated its willingness to proceed to an election in any unit found appropriate. Since the unit I find appropriate is broader than the petitioned-for unit, the Petitioner is granted fourteen (14) days from the date of this Decision to make an adequate showing of interest, if necessary. Should the Petitioner not wish to proceed to an election in the broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.

#### **CONCLUSION AS TO THE UNIT**

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time selectors/pickers, outboard loaders/checkers, inbound off loaders/checkers, stockers, BLAST Odenberg infeed and outfeed, inventory control, sanitation and maintenance employees, leadpersons, clerks, warehousemen and drivers/yard jockeys employed by the Employer at its Strasburg, Virginia facility, but excluding all other employees such as CSRs, professional employees, managers, guards and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION**

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and

---

<sup>8</sup> As noted above, it is undisputed that the CSR identified as Lance spends 50 percent of his time working as a clerk. I find that Lance is a dual-function employee who regularly performs duties similar to the clerks for sufficient periods of time to demonstrate that he has a substantial interest in working conditions in the unit. Ansted Center, 326 NLRB No. 116 (1998); Air Liquide America Corp., 324 NLRB 661 (1997).

who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **TEAMSTERS LOCAL UNION NO. 639**.

### LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **June 5, 2001**.

Dated May 22, 2001

at Baltimore, Maryland

/s/ WAYNE R. GOLD  
Regional Director, Region 5



460-5067-4950  
440-1760-6780  
177-8560-1000